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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,059	12/19/2001	Patricia Lee Christon	8819	6014

27752 7590 02/23/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

12

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/025,059

Applicant(s)

CHRISTON ET AL.

Examiner

Michele Kidwell

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 06 February 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-19.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


JOHN S. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of 5. does NOT place the application in condition for allowance because: the arguments provided by the applicant's representative are nonpersuasive. The applicant's representative argues that Benecke does not teach a colored portion having a first shade and a second shade or the first shade being positioned substantially within the second shade. The examiner disagrees and again refers to the rejection of claim 1. Page 3, second paragraph of the final office action dated December 30, 2003 states the examiner's position with respect to the Benecke reference. Benecke discloses on page 7 in paragraph 0072 that a fluorescent pigment or dye (a shade different from the first) may be mixed in the colored surface pigment or dye thereby providing the first (colored portion) and second (fluorescent pigment or dye) shades and having the first shade being positioned substantially within the second shade. In response to applicant's argument that Benecke does not teach a perception of depth, the examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The applicant's representative argues that a perception of depth is not taught by Benecke, but the claim language actually recites that the shades will be "operating to create a perception of depth..." According to the applicant's specification (page 2, lines 20 - 24), the perception of depth is created when multiple tones are used in an absorbent article. Benecke teaches the use of the full spectrum of visible colors (page 14, claim 8) which would result in creating the perception of depth. Regarding the representative's allegation that the Examiner failed to address the applicant's arguments, the examiner maintains that clarification of the position of the Office was provided on page 3, 2nd paragraph of the final office action dated December 30, 2003 and also reiterated on page 6, 2nd paragraph of the same action.